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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.L. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. S.L. et al., Defendants and Appellants.	E056712 (Super.Ct.No. RIJ114732) O P I N I O N

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Megan Turkat-Schirn, under appointment by the Court of Appeal, for Defendant and Appellant A.L.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant S.L.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendants and appellants A.L. and S.L. are the parents (individually Mother and Father) of twins A. and S., a girl and boy, and their younger sister D. The parents appeal from the July 11, 2012, order of the juvenile court terminating parental rights and placing the children for adoption. (Welf. & Inst. Code, § 366.26.)[1]

Mother claims the juvenile court abused its discretion in denying her section 388 petition seeking the return of the children to her care pursuant to a family maintenance plan or for additional reunification services. Father joins this claim. Both parents claim that the court erroneously refused to apply the parental benefit exception to the adoption preference (§ 366.26, subd. (c)(1)(B)(i)), and on that basis select guardianship over adoption as the children's permanent plan. We find no error and affirm.

II. BACKGROUND

A. *The Initial Dependency Proceedings for the Twins (June 2007-January 2009)*

Twins A. and S. were taken into protective custody shortly after they were born in June 2007. Mother and A., but not S., testified positive for methamphetamine, and both parents admitted using the drug together the week before the twins were born. Mother also admitted using methamphetamine in February and May 2007, despite knowing she

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

was pregnant. She said she used the drug when she became angry. She had also had little prenatal care.

Mother and Father were not married to each other when the twins were born. Mother was still married to R.V. with whom she had two girls. Mother and R.V. separated in 2004 and Mother has since filed for divorce. The older girls lived with R.V. and had little contact with Mother. Mother did not support the older girls, and visited them only on their birthdays. No dependency proceedings were instituted for the older girls.

Mother was born in 1977, and admitted using marijuana and methamphetamine "on and off" since she was 13 years old. Between 2004 and 2005, she attended a drug treatment program "through Riverside County" but began using drugs again in 2006. In 2004, she was diagnosed with paranoid schizophrenia, but claimed this was attributable to her reaction to using drugs with R.V. She underwent eight days of drug treatment during 2006.

Father was born in 1966, had used marijuana since he was nine years old, and began using "speed" in his 20's. As of June 2007 he was using marijuana daily, but said he was trying to cut down on his usage. As noted, Father admitted using methamphetamine with Mother while she was pregnant with the twins.

Father also had a criminal history involving drugs, forgery, and burglary. In April 2007, he was convicted of driving under the influence (DUI) and was ordered to attend an outpatient DUI program. In May 2007, he was arrested for possessing less than an ounce

of marijuana. From December 2006 to February 2007, he attended narcotics anonymous classes. He had additional drug-related arrests and convictions in 2005 and 2006. In 1985, Father was sentenced to five years in prison in Nevada, and a served another five-year prison sentence in California between 1995 and 2000. His felony offenses included credit card forgery, burglary, embezzlement, and grand theft.

In July 2007, the court sustained allegations that the parents had substance abuse and domestic violence problems that placed the twins at risk and interfered with their ability to protect the twins. (§ 300, subd. (b).) The twins were continued in foster care, and the parents were awarded reunification services. In November 2007, the parents were admitted to separate inpatient drug treatment programs at MFI Recovery Center.

By the time of the six-month review hearing in January 2008, the parents had nearly completed their inpatient programs and were described as "on the road to recovery." Mother was pregnant with D. The court continued the parents' reunification services for an additional six months and authorized plaintiff and respondent Riverside County Department of Public Social Services (DPSS) to place the twins with the parents, provided the parents continued to comply with their plans, had successful unsupervised day, overnight/weekend, and holiday visits with the twins, and met other conditions. The parents had been visiting the twins weekly and were described as "very attentive" to their needs.

In February 2008, the court ordered A. to have open heart surgery and follow up echocardiograms, as recommended. A. had a congenital heart condition known as Shone

Complex. A. was diagnosed as "[f]ailure to [t]hrive" and was small for her age, but was meeting developmental and age appropriate goals. S. was healthy and had no developmental concerns. Mother gave birth to D., a healthy baby girl, in June 2008. No dependency proceedings were instituted for D.

Shortly after D. was born in 2008, the twins were placed with the parents pursuant to a family maintenance plan, while D. was not part of the case. The parents had completed their case plans, including parenting classes, general counseling, anger management, substance abuse treatment, and random drug testing. Father was not living with Mother because his criminal record disqualified him from sharing the apartment she obtained through a housing program. Father was living with his parents in Riverside but was visiting the family every day, working part-time, and looking for full-time employment. Mother was a "stay at home mom," and the family was supported by both Father and Cal-Works assistance. The parents were commended for "work[ing] hard" to maintain their sobriety.

The parents were married in either August or November 2008. In January 2009, DPSS recommended, and the court terminated, the dependency proceedings for the twins. The parents were applauded for the good job they had done on behalf of themselves and their children.

B. *The "Reactivated" Dependency Proceedings for A., S., and D. (September 2010)*

In September 2010, a "[r]eactivated" section 300 petition was filed for all three children. Mother took D., then age two, to the doctor for treatment of a cold. At the

doctor's office, Mother began to cry and said she needed help because she was tired of Father beating her and the children. She had bruises on her arms and claimed Father inflicted the bruises by beating her. She also said Father had beaten S., then age three, for wetting the bed on the previous night, though S. showed no signs of abuse. Father arrived at the doctor's office, and Mother left with him and the children despite being advised to wait for the police to arrive and take a report. Mother said she did not want the police or child protective services to be called.

Later that day, a social worker arrived at the parents' apartment accompanied by police officers. Father answered the door and had a three-inch scratch under his left eye. The home was "somewhat cluttered" and the kitchen counters and stovetop were dirty, but no safety hazards were noted and there was adequate food for the children. The parents were interviewed separately.

According to Mother, she and Father had used methamphetamine only two days earlier. Mother estimated she was using the drug twice weekly, but was using more of it recently due to stress. In mid-September, the parents were served with a 30-day eviction notice which Mother claimed was due to a bed bug infestation. Mother claimed Father was "'verbally, mentally and physically abusive at times,'" and had once threatened to kill her if she took the children and left him. Father struck her in January 2010, but the aggression had since been "'mostly verbal.'"

The night before the interview, Mother awoke to the sound of S. screaming in the bathroom. Father was hitting S. on his buttocks for wetting the bed. Mother told Father

to stop and Father yelled at Mother so she "'head butted'" him in the chin and he pushed her back. The altercation continued into the hallway and the living room, ending with both parents falling to the floor. Father left the apartment and Mother locked him out, but allowed him to return after he calmed down.

Mother initially said she may have inflicted the scratch on Father's face, but she later said Father may have "'gotten it from being in a fight with his girlfriend who lives in another apartment.'" Father admitted that he and Mother were using methamphetamine again and that he was using marijuana daily for anxiety. Both parents denied using drugs in the presence of the children; instead, they would go into the bathroom to use. Mother later said that Father smoked marijuana even in the presence of the children. Marijuana was found in the kitchen within reach of the children.

The police arrested both parents because both had injuries and the officers were unable to determine who was the primary aggressor. The children were taken into protective custody and placed in foster care.

On October 12, 2010, after the children were ordered detained, both parents tested positive for methamphetamine and Father also tested positive for marijuana. When interviewed on October 6, Mother denied that she or Father had failed to benefit from their previous services, saying "'[i]t was only a relapse'" and she and Father were not continuously using drugs. The social worker opined that the parents were minimizing their substance abuse and domestic violence problems, and opined that they had failed to

benefit from their services. A. and S. were now showing significant delays in cognition, speech, and language, and D. was overweight.

On November 5, 2010, all three children were adjudged dependents, the parents were denied reunification services under section 361.5, subdivision (b)(13),[2] and a section 366.26 hearing was set in March 2011. The hearing was continued several times and was ultimately held on July 11 2012.

The delay in the permanency hearing is largely attributable to DPSS's failed efforts to place the children with paternal relatives. Between January 2011 and January 2012, DPSS attempted to place the children first with a paternal aunt, and later with a paternal nephew and his wife, but the potential relative placements ultimately fell through. In February 2012, DPSS began searching for a suitable prospective adoptive home for the children. In April 2012, the children were placed in a prospective adoptive home.

C. *Mother's Section 388 Petition and the Section 366.26 Hearing*

On July 11, 2012, Mother filed a section 388 petition seeking placement of the children with her pursuant to a family maintenance plan or, alternatively, additional reunification services for herself. A hearing on the petition was held on July 11, 2012,

[2] Under section 361.5, subdivision (b)(13), reunification services "need not be provided" to a parent when the court finds by clear and convincing evidence that the parent has a history of extensive drug use and has "resisted prior court-ordered treatment for this problem" during the three-year period immediately prior to the filing of the petition.

immediately before the section 366.26 hearing, which had been continued from July 9 to allow Mother time to file her petition.

In support of her petition, Mother showed she had completed Family Preservation Court along with additional parenting and anger management classes. She had tested clean in 48 random drug tests between November 2010 and November 2011, and had a narcotics anonymous sponsor. She was employed and had an apartment in San Bernardino. In October 2011, Mother and Father signed a month-to-month rental agreement for the apartment.

At the hearing, the parties agreed that if called to testify Mother would affirm that Father had not been living in the apartment since June 6, 2012. DPSS reports showed that Father had a positive drug test in November 2011 and had since dropped out of Family Preservation Court. Mother's counsel told the court that Mother and Father had agreed it would be best for the children if he moved out "so Mother would be able to have the children returned to her." Regarding the best interest prong, Mother's counsel pointed out that Mother and Father had regularly visited the children twice weekly, at least until a couple of months before the hearing.[3] The visits had gone well, and the children sought Mother's "counsel and . . . comfort."

DPSS opposed the petition. Counsel for DPSS conceded that Mother had shown changed circumstances but argued she had not met her burden of showing that the

[3] The frequency of the parents' visits was reduced after the children were placed with the prospective adoptive parents (PAP's).

children's best interests would be served by returning them to her care pursuant to a family maintenance plan, or offering her additional reunification services. Counsel questioned whether Mother had benefited from her services, and pointed out that Mother apparently still had a relationship with Father, who tested positive for drugs in November 2011 and failed to complete Family Preservation Court.

Counsel emphasized that returning the children to Mother would not serve their best interests because, in continuing to expose the children to Father, Mother would not provide a home environment "'free from the negative effects of substance abuse,'" which, under section 300.2, is necessary for the "'safety, protection, and physical and emotional well[-]being of the child.'" In short, counsel argued that Mother had not shown that she understood or appreciated that her association with Father could jeopardize the children's safety and well-being.

In addition, DPSS reports showed that the children were doing very well in their prospective adoptive home, where they were placed on April 27, 2012. The June 5, 2012, addendum report recounted that, during a May 22 visit, the children "clung to the PAPs and would not go into the play area with the parents" until they were assured they would be leaving with the PAP's at the end of the visit. S. was punching the parents during the visit but responded to the PAP's redirection. A. withheld affection from the parents during the visit. D. would not leave the PAP's at first, and often ran back to them for reassurance. Counsel argued that the children's behavior showed they understood that

the PAP's were committed to raising them, and they were responding to the sense of comfort and stability the PAP's were providing them.

DPSS reports also showed that the children were improving in their "aggressive communication and their cognitive deficits" through therapy in the PAP's home, and the PAP's were committed to doing "whatever [was] necessary" to ensure that the children's needs were met "on a consistent and ongoing basis." A. would require a heart valve transplant in the future. In sum, DPSS questioned Mother's ability to consistently provide a safe home environment for the children, together with the level of care the children required, given her history of substance abuse, her failed reunification with the twins, and her methamphetamine use even after the children were detained again in September 2010.

In rebuttal, Mother's counsel emphasized that at the time of the May 22 visit, the children had only been with the PAP's for less than a month, and the children were likely showing their loyalty to the PAP's by being angry with their parents.

Minors' counsel joined DPSS's opposition to Mother's petition. Father's counsel argued in support of the petition, emphasizing Mother's success at maintaining sobriety since November 2010, the parents' frequent, consistent, and on-time visits with the children, and a March 12, 2012, DPSS addendum report showing that the children enjoyed visiting with the parents.

At the conclusion of the hearing, the court commended Mother for the steps she had taken to address her "long-standing substance abuse issues" and other issues, but

denied the petition on the grounds her circumstances had not changed to a degree that would justify the requested change in order, and the requested change would not serve the best interests of the children.

Proceeding to the section 366.26 hearing, the court terminated parental rights and selected adoption as the children's permanent plan. The court rejected the request by counsel for each of the parents to place the children in a long-term guardianship on the ground that severing their relationship with the parents would be detrimental to them. Father's counsel pointed out that the children had only been living with the PAP's for around two and one-half months but had known the parents' love and affection their entire lives.

III. DISCUSSION

A. *Mother's Section 388 Petition Was Properly Denied*

Section 388 allows the parent of a dependent child to petition the juvenile court to change, modify, or set aside a previous order of the court. Under the statute, the parent has the burden of establishing by a preponderance of the evidence that (1) there is new evidence or changed circumstances justifying the proposed change of order, and (2) the change would promote the best interest of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; § 388, subds. (a), (b).) The decision to grant or deny the petition is addressed to the sound discretion of the juvenile court, and its denial of the petition will not be overturned on appeal unless an abuse of discretion is shown. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959-960 [Fourth Dist., Div. Two].)

"After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability . . . .'" (*In re Stephanie M., supra,* 7 Cal.4th at p. 317, quoting *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Still, it is at this very point that "[s]ection 388 plays a critical role in the dependency scheme. Even after family reunification services are terminated and the focus has shifted from returning the child to his parent's custody, section 388 serves as an 'escape mechanism' to ensure that new evidence may be considered before the actual, final termination of parental rights." (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1506; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 528.)

Mother claims the juvenile court abused its discretion in denying her section 388 petition. She argues that her "substantial efforts to regain sobriety, a stable life style, and maintain her close relationship with the children" constituted a change in circumstances, and "it was in the best interest of the children to have continued contact" with Mother. We disagree.

As the juvenile court concluded at the time of the July 11, 2012, hearing on her petition, Mother's circumstances had not changed enough, or for a long enough period, to justify returning the children to her care pursuant to a family maintenance plan or granting her additional reunification services. To be sure, Mother had been clean and sober for 20 months since November 2010, a substantial period of time, but she had been clean and sober for a comparable period during the initial dependency proceedings (June

2007 to January 2009) but relapsed and was using methamphetamine again by September 2010. This occurred despite Mother's completion of an inpatient substance abuse program and relapse prevention class in February 2008.

In addition, Mother failed several attempts to stay sober between 2004 and 2006, even though she had two other young children at the time with her first husband R.V. Mother was 35 years old at the time of the July 11, 2012, hearing, and had begun using methamphetamine at the age of 13. Mother was also still in a relationship with Father, who also had a lengthy history of substance abuse, had not remained clean and sober, and had yet to complete Family Preservation Court. As the social worker reported, Mother had not addressed the domestic violence problem during the second dependency proceedings, or thereafter. In sum, given her history of methamphetamine use, relapses, lack of insight into her domestic violence problem, and questionable judgment, the court did not abuse its discretion in concluding that Mother did not show a sufficient change of circumstances to justify granting her petition.

Nor did the juvenile court abuse its discretion in concluding that granting Mother's petition would not serve the best interests of the children. By the time of the July 11, 2012, hearing, the children had spent more than a year in foster care awaiting placements with paternal relatives that never materialized. In June 2012, the twins turned five years old and D. turned four years old. The children were placed with the PAP's in April 2012, and quickly bonded with them. At a May 22, 2012, visit with the parents, S. was hitting the parents and A. and D. were reticent to show affection toward them. The children also

had special needs. A. would need a heart valve transplant; A. and S. had developmental delays; and all three children hit each other. These problems were being addressed and the children had shown substantial improvement in foster care and later in the PAP's care, but it was doubtful that Mother was capable of providing the same level of care and stability that the PAP's provided and that the children very much needed and deserved.

B. *The Court Properly Determined That the Parental Benefit Exception Did Not Apply*

Both parents claim the juvenile court erroneously concluded that the parental benefit exception did not apply (§ 366.26, subd. (c)(1)(B)(i)), and as a result erroneously selected adoption over guardianship as the children's permanent plan. Here, too, we find no abuse of discretion.

1. The Parental Benefit Exception

At a section 366.26 permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Permanent plans include adoption, guardianship, and long-term foster care. (*In re S.B.* (2008) 164 Cal.App.4th 289, 296.) "Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) Adoption involves terminating the legal rights of the child's natural parents, but guardianship and long-term foster care leave parental rights intact. (*Id*. at p. 574.) "Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child." (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1344.)

In order to avoid termination of parental rights and adoption at a section 366.26 hearing, a parent has the burden of showing that one or more of the statutory exceptions to termination of parental rights set forth in section 366.26 subdivision (c)(1)(A) or (B) apply. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469; *In re Celine R.* (2003) 31 Cal.4th 45, 53.) The exceptions "merely permit the court, in *exceptional circumstances* (*In re Jasmine D.* [(2000) 78 Cal.App.4th 1339,] 1348-1349 [*Jasmine D.*]), to choose an option other than the norm, which remains adoption." (*In re Celine R., supra,* at p. 53).

Under the parental benefit exception (§ 366.26, subd. (c)(1)(B)(i)), the court must "find[] a *compelling reason* for determining that termination [of parental rights] would be detrimental to the child . . . ." (§ 366.26, subd. (c)(1)(B), italics added; *In re Scott B., supra,* 188 Cal.App.4th at p. 469.) The parental benefit exception applies when two conditions are shown: the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i); *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

In order to show that the child would benefit from continuing the relationship with the parent, the parent "must do more than demonstrate . . . an emotional bond with the child"; the parent "must show that he or she occupies a 'parental role' in the child's life." (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must also show that the parent-child relationship "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural

parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575.)

"'The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child's life spent in the parent's custody, the "positive" or "negative" effect of interaction between parent and child, and the child's particular needs. [Citation.] When the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption.' [Citation.]" (*Jasmine D., supra,* 78 Cal.App.4th at pp. 1349-1350.)

2. Standard of Review

Appellate courts have variously applied the substantial evidence test and the abuse of discretion test in considering challenges to juvenile court determinations that the parental benefit exception to termination did not apply. (*In re Scott B., supra,* 188 Cal.App.4th at p. 469.) There is little, if any, practical difference between the two. (*Ibid.*) As explained in *Jasmine D.*: "'[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only

"'if [it] find[s] that . . . no judge could reasonably have made the order that he did.' . . .'" [Citations.]" (*Jasmine D., supra,* 78 Cal.App.4th at p. 1351.)

Further, the abuse of discretion standard has traditionally been applied to custody determinations and "seems a better fit" for reviewing a juvenile court's determination that the parental benefit exception does not apply. (*Jasmine D., supra*, 78 Cal.App.4th at p. 1351.) This is so because the court must find "a 'compelling reason'" for applying the exception, and this is "a quintessentially discretionary determination." (*Ibid.*)

In the view of at least two Courts of Appeal, both the substantial evidence and abuse of discretion standards of review come into play in determining whether the parental benefit or sibling relationship exceptions apply. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 [Sixth Dist.]; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 [Second Dist., Div. Seven].) Under either standard of review, the juvenile court properly determined that the parental benefit exception did not apply.

3. Analysis

Given their consistent visits with the children, the parents claim the juvenile court erroneously refused to apply the parental benefit exception and as a result erroneously selected adoption over guardianship as the children's permanent plan. Each parent claims the record showed that the children would have benefited more from continuing their relationship with each parent than from being adopted. We disagree.

To be sure, the record unequivocally shows, and the juvenile court did not disagree, that the parents "maintained regular visitation and contact" with the children

through their consistent visits with the children. (§ 366.26, subd. (c)(1)(B)(i); *In re Angel B., supra,* 97 Cal.App.4th at p. 466.) But based on the entire record, the court reasonably determined that the children would benefit more from being adopted into a permanent, stable home than from maintaining their relationship with the parents. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575.)

There was no indication that the children would benefit more from continuing their relationship with the parents than they would from being adopted. The twins were five years old and D. was four years old at the time of the section 366.26 hearing. They quickly bonded to the PAP's, with whom they had only been living for approximately two and one-half months. As counsel for DPSS argued, it appeared that the children were responding positively to the PAP's because they understood that the PAP's were dedicated to them. All three children, and especially the twins, had known much instability before being placed with the PAP's. In sum, substantial evidence showed, and the juvenile court reasonably determined, that neither parent was capable of providing the level of care and stability that the PAP's or other prospective adoptive parents could provide and that these young children very much needed.

Nor was there any indication that the children would suffer any detriment if parental rights were terminated and they never saw the parents again. As stated in *In re Angel B., supra,* 97 Cal.App.4th 454 at page 466: "To overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial,*

positive emotional attachment such that the child would be *greatly* harmed. [Citation.]" Even though the record showed that the children enjoyed visiting with the parents—at least until the May 22, 2012, visit—there was no indication that any of them would be even minimally harmed by severing their relationship with the parents. Indeed, there was no indication that any of the children shared a positive emotional attachment with either parent at the time of the July 11, 2012, hearing.

Lastly, Mother claims the juvenile court "erred by not considering the benefits of legal guardianship instead of adoption." (Capitalization omitted.) She relies on *In re Brandon C.* (1999) 71 Cal.App.4th 1530 (*Brandon C.*), where the juvenile court placed twin boys in a long-term guardianship with their paternal grandmother, with whom the boys had been living since they were less than one year old. (*Id.* at pp. 1532-1533.) At the section 366.26 hearing, the grandmother told the court that the boys had a good relationship with their mother, and the grandmother felt that the relationship should continue. (*Brandon C., supra,* at p. 1533.) The court selected guardianship over adoption as the boys' permanent plan, reasoning that it was in the best interests of the boys to maintain their relationship with their mother. (*Ibid.*)

The Los Angeles County Department of Children and Family Services appealed, claiming insufficient evidence supported the juvenile court's finding that termination of parental rights would be detrimental to the boys. (*Brandon C., supra,* 71 Cal.App.4th at pp. 1532-1533.) The *Brandon C.* court simply held that substantial evidence supported the juvenile court's determination that the parental benefit exception applied, because the

mother had consistently visited the boys, and the boys had "a substantial, positive emotional attachment" with the mother. (*Id*. at pp. 1533-1535.) The court wrote that it was "not troubled by the [juvenile] court's reference to mother being able to provide a 'safety valve in the future, if need be,'" or additional security for the children in the event the grandmother became unable to care for them. (*Id*. at p. 1538.)

Mother argues that here, as in *Brandon C.*, the juvenile court should have selected guardianship over adoption as the children's permanent plan. Not so. Unlike the twin boys in *Brandon C.*, none of the children here had "a *substantial*, positive emotional attachment" with either parent such that any of them would be "*greatly* harmed" by discontinuing the relationship. (*In re Angel B., supra*, 97 Cal.App.4th at p. 466.) And, for the reasons discussed, neither parent met his or her burden of showing that any of the children would benefit more from continuing their relationship with either parent than from being adopted into a permanent, stable home. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.)

IV. DISPOSITION

The July 11, 2012, order terminating parental rights and placing A., S., and D. for adoption is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

RICHLI
Acting P. J.

MILLER
J.